



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 17, 2023

IN THE MATTER OF:

Appeal Board No. 629297

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective October 27, 2022 through March 15, 2023, on the basis that the claimant did not comply with reporting requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed May 12, 2023 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not adequately developed with respect to the claimant's failure to comply with reporting requirements, specifically in light of the claimant's testimony that he did not recall whether he had received notice of the mandatory workshop meeting to be held on October 27, 2022.

The Commissioner of Labor should be represented at the remand hearing, and is directed to produce Sandra LoSardo, the workforce advisor who reviewed with the claimant the "Reemployment Plan" on or about October 12, 2022, providing the claimant with notice that he had to attend the October 27, 2022 workshop.

Pages 19 and 20 of the file should be utilized in questioning Sandra LoSardo, and shall be received into

evidence after the appropriate confrontation and opportunity for objection.

The claimant shall be questioned about the "Reemployment Plan," in the file at pages 15-18, which bears an electronic signature next to the date of October 13, 2022, indicating that the claimant was notified of, and agreed to attend, the appointment scheduled for October 27, 2022, and understood that his noncompliance might result in his ineligibility to receive unemployment benefits. This document shall be received into evidence after the appropriate confrontation and opportunity for objection.

The claimant shall also be questioned about the "Failure to Report to Mandatory DOL Appointment" questionnaire, in the file at pages 7-10, on which the claimant appears to have indicated that he did not report for the mandatory appointment because he was "Out of Area" and "Other," indicating that he had no reliable transportation and was not fully informed that he had the meeting. This document shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties shall be questioned further regarding the reason for the claimant's failure to attend the mandatory meeting on October 27, 2022, and how the claimant was made aware of the repercussions of his failure to attend this meeting. Supporting documents that are in the file, or produced by the parties, shall be received into evidence after the appropriate confrontation and opportunity for objection.

In light of the claimant's testimony that he "kept trying to call" when he realized his benefits were being held, the claimant shall be questioned regarding his attempts to contact the Career Center between October 27, 2022 and March 16, 2023. Further, the claimant is directed to produce his telephone records for this period to establish the calls he made. The records produced by the claimant shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to produce the evidence directed herein may result in the hearing Judge or the Board taking an adverse inference against that party, and finding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of the claimant's failure to report, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issue of the claimant's ineligibility effective October 27, 2022 through March 15, 2023, on the basis that the claimant did not comply with reporting requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER